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08 MAY 2003

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In re Application of :
Dyck et al. :
Serial No.: 09/646,110 : DECISION
PCT No.: PCT/CA99/00250 :
Int. Filing Date: 25 March 1999 :
Priority Date: 26 March 1998 :
Attorney's Docket No.: 10242-034 :
For: ALIPHATIC AMINO CARBOXYLIC AND :
AMINO PHOSPHONIC ACIDS, AMINO :
NITRILES AND AMINO TETRAZOLES AS :
CELLULAR RESCUE AGENTS :

This decision is responsive to applicant's telephonic inquiry of 28 April 2003. No petition fee is due.

BACKGROUND

On 25 March 1999, applicants filed international application PCT/CA99/00250, which claimed priority of two earlier United States provisional applications, the earliest of which was filed 26 March 1998. A copy of the international application was received by the United States Patent and Trademark Office from the International Bureau on 30 September 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 14 October 1999 prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 26 September 2000.

On 26 September 2000, applicants filed a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by, *inter alia*,

the requisite basic national fee as required by 35 U.S.C. 371(c). These papers were assigned Application No. 09/646,110.

On 13 November 2000, the United States Patent and Trademark Office in its capacity as an Elected Office mailed the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and the surcharge fee.

On 16 January 2001, applicants filed executed declarations for inventors Dyck, Davis, Liu, Durden and Bouton. Since inventor Patterson is deceased, applicants filed a declaration executed by his legal representative, The Canada Trust Company as well as the Leter Probated of the Last Will and Testament. Applicants also filed an assignment, a power of attorney executed by the inventors and the legal representative for Mr. Patterson, a petition and the fee for a one-month extension of time, and the Initial Data Sheet.

On 01 February 2001, the United States Patent and Trademark Office in its capacity as an Elected Office mailed the "NOTIFICATION OF DEFECTIVE RESPONSE" (Form PCT/DO/EO/916) and "NOTIFICATION OF DEFECTIVE OATH OR DECLARATION" (Form PCT/DO/EO/917) indicating that the declaration did not comply with 37 CFR 1.497(a) and (b) and 37 CFR 1.63.

On 26 February 2001, applicants filed a response indicating that the Declaration submitted on January 12, 2001 does comply with 37 CFR 1.63 since an Initial Application Data Sheet was also submitted. This response was treated as a request under 37 CFR 1.42.

On 05 July 2001, the request under 37 CFR 1.42 was dismissed for failure to identify the correct inventive entity as required under 36 CFR 1.497(a)(3).

On 05 November 2001, applicant filed 3 new complete declarations and affidavits from the representatives of The Canada Trust Company.

On 10 December 2001, the United States Patent and Trademark Office mailed a decision indicating that declarations filed 05 November 2000 did satisfy the provisions of 37 CFR 1.497.

On 01 April 2003, the United States Patent and Trademark Office mailed the "NOTICE OF ABANDONMENT" (Form PCT/DO/EO/909).

DISCUSSION


The decision mailed 10 December 2001 indicated that the declarations had met the requirement of 37 CFR 1.497. Therefore, the Notice of Abandonment mailed 01 April 2003 was mailed out in error, and is hereby vacated.

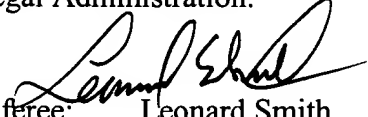
CONCLUSION

The "NOTICE OF ABANDONMENT" (Form PCT/DO/EO/909) mailed 01 April 2002 is hereby **VACATED**.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision; and, if appropriate, a Notification of Acceptance of Application (Form PCT/DO/EO/903) will be mailed showing a 35 U.S.C. 371 date of 05 November 2001.

Applicant is advised that, effective May 1, 2003, the Office has changed its correspondence address. Any further correspondence with respect to this matter deposited with the United States Postal Service on or after May 1, 2003 should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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